

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD CARNES,

Petitioner,

v.

WARDEN ZAKEN, *et al.*,

Respondents.

Case No. 1:20-cv-267-SPB-RAL

MEMORANDUM ORDER

The petition for a writ of habeas corpus in this case was received by the Clerk of Court on September 20, 2020 and referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation (“R&R”) in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and the Local Rules for Magistrate Judges. ECF No. 1. The petition was subsequently filed of record on October 26, 2020. ECF No. 7. The District Attorney of Erie County filed a response to the instant habeas petition on February 23, 2021. ECF No. 14.

On April 6, 2021, Magistrate Judge Lanzillo issued an R&R recommending that this Court deny each of Petitioner’s claims, dismiss his petition with prejudice, and decline to issue a certificate of appealability. ECF No. 19. Judge Lanzillo concluded that the petition was untimely under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. §2254(d)(1)(A), and that neither statutory tolling nor equitable tolling could save Petitioner’s claims. Judge Lanzillo further concluded that Petitioner had not shown his “actual innocence” for purposes of avoiding AEDPA’s time bar.

Objections to the R&R were due on April 23, 2021. As of the date of this Order, no objections have been received.

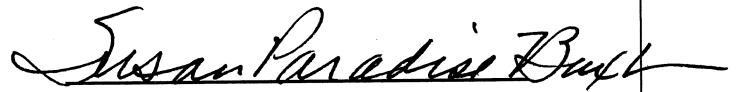
After *de novo* review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 29th day of April, 2021, IT IS ORDERED that the within petition for a writ of habeas corpus, ECF No. [7] shall be, and hereby is, DISMISSED with prejudice on grounds of untimeliness.

In addition, because jurists of reason would not find it debatable whether the instant petition is untimely, IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

Finally, IT IS ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, issued on April 6, 2021, ECF No. [19], is hereby adopted as the opinion of this Court.

As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."



SUSAN PARADISE BAXTER
United States District Judge

cm: Donald Carnes
LN4163
SCI-Greene
169 Progress Drive
Waynesburg, PA 15370
(via U.S. Mail)

Justin J. Smith, Esq. (via CM/ECF)

The Honorable Richard A. Lanzillo (via CM/ECF)